RESOLUTION AGREEMENT
[Redacted Content] and Bennett School District 29J
OCR Case No. 08-24-1230

[Redacted Content] (School) and Bennett School District 29J (District) enter into this Resolution Agreement (the Agreement) to resolve the violations and compliance concerns that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) identified in the above referenced case. The School and District assure OCR that it will take the following actions to comply with the requirements of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin in any program or activity operated by a recipient of federal financial assistance from the Department.

OCR investigated whether, during school year (SY) 2023-24, the School discriminated against national origin minority students on the basis of limited English proficiency (LEP) by failing to: (a) identify and assess English learner (EL) students in need of language assistance in a timely, valid, and reliable manner; (b) provide ELs with a language assistance program that is educationally sound and proven successful; (c) sufficiently staff and support the language assistance program for ELs with the services necessary to participate meaningfully in the School's educational program; and, (d) ensure that parents' decisions to opt out of the language assistance program are knowing, voluntary, and appropriately documented. OCR's investigation found that the School and District failed to comply with Title VI with respect to the allegations opened for investigation.

OCR also identified four compliance concerns regarding the School's obligation to: (e) provide ELs with meaningful access to the core curriculum; (f) monitor the academic progress of former ELs for at least two years; (g) ensure meaningful communication to parents with limited English proficiency (LEP) in a language the parents understand; and, (h) meet the record-keeping obligations under Title VI. The School and District agreed to resolve these violations and concerns by executing the Agreement and by fulfilling the requirements below to demonstrate compliance with Title VI.

I. Definitions

Core content: Elementary and secondary math, science, social studies, and English/language arts.

Days: Calendar days, except that if a deadline occurs on a weekend or holiday, the due date will be the next business day.

English language development (ELD): The teaching of English language skills to students who are in the process of learning English so that they develop the discourse practices they need to engage with rigorous, grade-level disciplinary content.

English language proficiency (ELP): A student's ability to read, write, speak, and understand the English language as determined by the student's scores on a valid and reliable ELP assessment of each of the four language domains (i.e., speaking, listening, reading, and writing).

English language proficiency level (ELP level): The English learner's composite level of English language skill in the four language domains as determined by the WIDA ACCESS test. The ACCESS levels are: (1) entering; (2) emerging; (3) developing; (4) expanding; (5) proficient; and (6) reaching.

English learner students (ELs): Students who require assistance to overcome language barriers that impede their equal participation in a recipient's instructional programs.

Former English learner (a.k.a. exited student or redesignated student): A student who was formerly an EL student but subsequently met valid and reliable criteria for exiting the EL program. These criteria include demonstrating proficiency on a valid and reliable assessment of ELP in all four language domains.

Home language questionnaire (HLQ): The School uses the HLQ at the time of enrollment to gather information about a student's language background (e.g., first language learned, language the student uses most often, and languages used in the home) to identify students with a Primary or Home Language Other Than English (PHLOTE) who should have their English language proficiency assessed to determine if they are ELs entitled to language assistance services.

Opted-out English learner: An EL student whose parent opted the student out of instructional services for ELs by signing a voluntary and informed waiver of such services (i.e., Parent Opt-out Waiver form) in a language the parent understands.

Qualified interpreter or qualified translator: An individual who, whether a paid School or District employee, contractor, or volunteer: (a) is fluent in English and in the language(s) in which the individual is communicating; (b) has a demonstrated competence to interpret or translate; (c) is trained in providing the interpretation or translation requested; (d) is sufficiently knowledgeable in both languages of any specialized terminology needed to provide accurate interpretation or translation (e.g., special education terms); and (e) is trained in the ethics of interpretation and translation (e.g., the need for accuracy and confidentiality).

WIDA ACCESS for ELs (ACCESS): The examination used to assess the English language proficiency of students in Colorado in grades kindergarten through 12 whose primary or home language is other than English.

WIDA Screener: The Colorado placement assessment used as one indicator to determine English language proficiency of newly enrolled and transferring students.

II. General Requirements

A. The School will take affirmative steps to open up its programs and activities to ELs to ensure they have an equal opportunity to participate in those programs and activities in a meaningful way.

B. The School will: (a) offer identified ELs educationally sound ELD programs that are reasonably calculated to enable ELs to achieve English proficiency and to attain parity of participation in the standard instructional program within a reasonable period of time; (b) commit adequate personnel and other resources to implement those ELD programs as designed; and (c) evaluate the effectiveness of those ELD programs and modify any that are ineffective in a timely way.

III. Specific Requirements

A. Identifying and Placing ELs

1. The School will have procedures in place to accurately and timely identify:
   a. PHLOTE students and to determine if they are ELs through a valid, reliable, and age-appropriate test that assesses ELP in speaking, listening, reading, and writing; and,
   b. former ELs newly enrolled in the School, to minimally include requesting records from the student's previous district of attendance and coordinating with the District to access appropriate state-level data from CDE.

2. Within 10 days of a new student enrolling in the School, the School will ask the student's parent to complete the HLQ to identify PHLOTE students and provide the HLQ in a language the parent understands or with the aid of an interpreter.

3. Within 20 days of a PHLOTE student matriculating, the School will administer the grade-appropriate WIDA Screener to determine if the student is an EL student. The School will ensure that the grade-appropriate WIDA Screener is administered to all students for whom the HLQ indicates a language influence other than English is present.

4. As soon as practicable and no later than 30 days of an EL student matriculating, the School will place the EL student in an appropriate language instruction program (the EL program) consistent with the student's ELP level, as determined by the WIDA Screener.

5. Within 30 days of an EL student matriculating, the School will issue a written notice to the student's parent in a language the parent understands about the student's status as an EL, the student's ELP level, the ELD program in which the EL student was placed, and the parent's right to opt out of ELD services.

6. The School will ensure that parents' decisions to opt their EL student out of ELD services are made knowingly (i.e., with information about the student's rights, the range of ELD services that the student could receive, and the benefits of such services) and voluntarily (i.e., without recommending that parents opt out the student or pressuring or coercing parents to opt out the student) and are documented on a Parent Opt-out Waiver form.

7. The School will notify School employees of which students are ELs and each EL's primary language and EL status (i.e., current, opted-out, or exited and in monitoring) using: (a) fields in [redacted content]; (b) a spreadsheet shared among all staff at the School; and (c) email reminders at the beginning of each semester.

8. The School will identify an employee who will be responsible for timely entering data about the School's ELs into Infinite Campus (IC). The District will verify the accuracy of the School's entries in IC related to ELs at least once per semester.

9. **Reporting:** Within 90 days of signing the Agreement, the School will provide to OCR for it review and approval a draft plan to fulfill Terms III.A.1-8 above. The plan will include, at a minimum: (a) the School's proposed identification procedures; (b) a copy of the draft HLQ; (c) a draft of the parent notification letter, as required by Term III.A.5; (e) a description of the School's proposed process to ensure that parents' decisions to opt their EL student out of ELD services are knowing and voluntary; (g) a draft of the spreadsheet required by Term III.A.7(b); and (h) the name of the employee required by Term III.A.8.

B. Language Assistance Services for ELs

10. The School will provide all ELs, except those who have been opted out, with appropriate (i.e., educationally sound in theory and effective in practice) language assistance services until they are proficient in English and can participate meaningfully in the School's educational programs without language assistance services.

11. The School will implement an ELD programming model to ensure ELs acquire proficiency in English. The School will select a recognized ELD curriculum which aligns to the proposed ELD program model. The School will implement the ELD programming model and will purchase and implement the approved curriculum. The School will implement the ELD programming model and curriculum, and School staff will receive training as required by Term III.I.

12. The School will ensure that ELs have access to the core grade-level curricula by using effective strategies for sheltering instruction to make the lessons comprehensible to ELs.

13. The School will provide all ELs with ELD instruction in the core grade-level curricula by embedding the ELD within core content instruction. This instruction includes an array of teaching strategies to make core content classes more comprehensible and accessible to EL students while promoting their ELD, including: scaffolding and differentiated instruction based on ELP level that meets individual language needs and provides meaningful access to content instruction; teaching to language objectives that help ELs achieve content objectives; building and activating background knowledge; explicitly teaching academic vocabulary; using supplementary and adapted materials, texts, and visual displays; grouping

ELs by ELP level; cooperative learning and group work; offering primary language support; providing comprehensible input and clarification; promoting academic discussions; teaching content-area reading and writing skills; using formative and summative assessments of language and content objectives with EL accommodations; and giving proficiency-level appropriate feedback on ELs' language use and demonstration of content knowledge.

14. The School will ensure that ELD teachers document in daily lesson plans: (a) the ELP standard(s) that will be taught and how it will be used to drive instruction and differentiate it for the different ELP levels of ELs in the group or class; (b) the language and content objective(s); (c) the strategies that will be used to deliver the content to ELs; and (d) the amount of ELD instruction that will be provided (in minutes).

15. The School will provide the resources and personnel necessary to effectively implement its ELD program, including: (a) appropriate instructional materials; (b) highly qualified teachers to provide language assistance services; and (c) trained administrators to evaluate teachers who provide language assistance services.

    a. The School will ensure that ELD teachers have obtained the CDE's culturally and linguistically diverse (CLD) Endorsement and have completed the training described in Term III.I below.
    b. The School will, with the support of the District, identify a data- and research-based target ratio of qualified teacher-to-students to provide language assistance services to ELs and develop a plan to achieve the target ratio. The School will ensure that the target ratio relies upon an accurate count of ELs.
    c. The School will designate one employee to coordinate language assistance services for ELs (EL Coordinator). The EL Coordinator will have adequate training and time to fulfill the role.
    d. The School will ensure that ELD instructional materials are appropriate and comparable in quality, availability, quantity, and age or grade level to those provided for non-ELs.

16. **Reporting:** Within 90 days of signing the Agreement, the School will provide to OCR for it review and approval a draft plan to fulfill Terms III.B.10-15 above. The plan will include, at a minimum: (a) when and in what classes the School will provide ELD instruction (e.g., draft bell schedules); (b) how the School will ensure that lesson plans meet the requirements of Term III.B.14; (c) the individual(s) who will serve as the EL Coordinator and any other job titles and duties the person has; (e) how the School will ensure the EL Coordinator has adequate training and time to fulfil the role; (f) the qualified staff-to-ELs ratio; and (g) descriptions of the ELD curriculum and instructional materials that the School proposes to use.

C. Opted-out ELs

17. The School will assess opted-out ELs' ELP, at least annually, using the ACCESS, to determine if they are still in need of and legally entitled to ELD services. The School will notify opted-out ELs' parents of their student's ACCESS results.

18. The School will monitor the academic progress of each opted-out EL student at least twice per school year – including by the end of the first and second semesters – to evaluate the student's ability to participate meaningfully in the regular education program without ELD services. Core content teachers will complete a monitoring form that includes, at a minimum, fields for teachers' narratives about the student's academic progress and the student's opt-out date, class grades, and assessment data.

19. For opted-out ELs who are not demonstrating appropriate growth in ELP or who are struggling in one or more subjects due to language barriers, the School will notify their parents of the lack of progress and offer their parents an opportunity to enroll the student in the EL program at any time. Notices may be sent at any time but at least once annually.

20. **Reporting:** Within 60 days of signing the Agreement, the School will report to OCR:

    a. For the School: (1) who will be responsible for ensuring that opted-out ELs are assessed annually for English proficiency and access to content and how the assessment results will be maintained; (2) how the School will notify opted-out ELs' parents of the student's ACCESS test results and how copies of the notices will be maintained; and (3) who will be responsible for ensuring that the monitoring forms required by Term III.C.18 and the notices required by Term III.C.19 are completed and how copies of the completed forms and notices will be maintained; and
    b. For OCR's review and approval: (1) a draft template for the notice required by Term III.C.19; and (2) a draft of the monitoring form required by Term III.C.18. Within 15 days of OCR's approval of each of the two forms, the School will use them to comply with the terms of this Agreement.

D. Monitoring Current ELs

21. The School will monitor the progress of all ELs to ensure they are proficient in English and acquire content knowledge within a reasonable period of time.

    a. The School will monitor the progress of all ELs in achieving proficiency in English by administering the ACCESS to ELs once per year.

    b. The School will monitor the progress of all ELs in acquiring content knowledge by analyzing – by the end of the first and second semesters – their class grades and assessments scores and narrative information from their teachers. The School will ensure that core content teachers complete a

monitoring form for each current EL student that includes, at a minimum, fields for teachers' narratives about the student's progress and the student's class grades and assessment data.

22. **Reporting:** Within 60 days of signing the Agreement, the School will provide to OCR for its review and approval a draft of the monitoring form required by Term III.D.21. Within 30 days of OCR's approval of the form, the School will use it to comply with the terms of the Agreement.

E. Monitoring Former ELs

23. The School will not exit ELs from ELD programs, services, or status until they demonstrate English proficiency on ACCESS in speaking, listening, reading, and writing. When an EL student achieves proficiency in English in the four language domains, as measured by the ACCESS, the School will: (a) exit the student from ELD services; (b) reclassify the student as a former EL student; and (c) notify the student's parent of the ACCESS score, exiting, reclassifying, and forthcoming monitoring.

24. The School will monitor the academic progress of former ELs for four years to ensure that: (a) they have not been prematurely exited; (b) any academic deficits they incurred resulting from the ELD program have been remedied; and (c) they are meaningfully participating in the School's educational programs comparable to their peers who were never ELs.

25. For the first two years after a student exits EL status, the School will monitor the academic progress of the student using a form that includes, at a minimum, fields for narratives from the student's teachers and fields for the student's exit or reclassification date, class grades, and assessment data.

26. When monitoring of a former EL student indicates that a persistent language barrier may be the cause of academic difficulty, the School will re-test the student with the ACCESS to determine if there is a persistent language barrier. If the results of the re-testing qualify the student as an EL, the School will reenter the student into EL status and offer ELD services. If the student is reentered into ELD services, the School will document the basis or bases for the reentry and the consent of the parent(s) to such reentry.

F. ELD Program Monitoring and Evaluation

27. To evaluate teachers' implementation of ELD instruction, the School will develop: (a) a lesson plan template for instruction in its ELD program model; (b) a classroom observation teacher feedback tool; and (c) walk-through and observation protocols.

28. The School will review lesson plans and conduct classroom observations, using the teacher feedback tool and the walk-through and observation protocols, at least quarterly to ensure that all ELs are receiving the ELD services required by the School's chosen ELD program, as reflected in Term III.B above. The School will ensure that lesson plan reviews and classroom observations are conducted by administrators who are properly trained to evaluate teachers who provide ELD services. If any ELs are not receiving the required ELD services, the School will develop a corrective action plan to provide the ELs with compensatory ELD services (e.g., free ELD services afterschool or during the summer) and ensure adequate ELD services in the future (e.g., additional professional development for their ELD teachers, closer supervision of ELD teachers, etc.).

29. The School will evaluate annually the School's ELD program to determine:

    a. whether the School provided ELD services to all identified EL students; and
    b. if, within a reasonable amount of time, students are becoming proficient in English and meaningfully participating in the standard educational program comparable to their never-EL peers.

    If the evaluation results demonstrate that a) the School has not provided services to all EL students, the School will timely develop a corrective action plan to provide compensatory ELD services to impacted students, and/or b) the ELD program is not producing both results (e.g., proficiency and meaningful participation), the School will timely modify the ELD program.

30. The monitoring of current and former ELs and ELD program evaluation will be led by individuals who are: (a) knowledgeable about legal requirements for ELs and ELD services, the OCR approved policies and practices regarding ELD services at the School, and the contents of the Agreement; and (b) proficient in data analysis and program evaluation.

31. **Reporting:** Within 90 days of signing the Agreement, the School will provide to OCR for its review and approval drafts of the lesson plan templates, feedback tools, and protocols, required by Term III.F.27-28. Within 30 days of OCR's approval of the templates, tools, and protocols, the School will use them to comply with the terms of the Agreement.

G. Meaningful Communications with Parents with LEP

32. The School will communicate information to parents with LEP in a language they understand about any school program, service, or activity that is called to the attention of parents who are proficient in English.

33. The School will notify employees of which parents are parents with LEP and each parent's language needs using: (a) a field in [redacted content]; (b) a spreadsheet

shared among all staff of the School; and (c) email reminders at the beginning of each semester.

34. The School will notify parents in writing (i.e., email, website, or letter) how a parent who requires communication in a language other than English or Spanish may receive free translation or interpretation of the communication.

35. **Reporting:** Within 60 days of signing the Agreement, the School will provide for OCR's review and approval: (a) draft of the spreadsheet required by Term III.G.33(b); and (b) a draft of the notification required by Term III.G.34. Within 30 days of OCR's approval of the spreadsheet and notification, the School will use and issue them, respectively, to comply with the terms of this Agreement.

H. Policies and Procedures

36. The School will develop, adopt, and disseminate policies and procedures designed to ensure compliance with legal requirements regarding ELs and parents with LEP. The policies and procedures will address at a minimum: (a) identifying PHLOTE and ELs including what specific answers on the HLQ require additional inquiry and/or screening; (b) placing ELs in ELD programs; (c) providing ELD to ELs with the curriculum adopted by the School, including the name of the adopted curriculum; (d) opting ELs out of ELD services; (e) monitoring the progress of current ELs, opted-out ELs, and former ELs; (f) evaluating and modifying ELD programs; (g) identifying parents with LEP and their needs for interpreters and translations; (h) training and professional development for administrators and teachers of ELs; and (i) recordkeeping.

37. **Reporting:** Within 90 days of signing the Agreement, the School will provide to OCR for its review and approval a draft of the policies and procedures required by Term III.G.36. Within 30 days of OCR's approval of these policies and procedures, the School will provide to OCR documentation showing that they have been adopted, distributed to all School employees, and posted on the School website.

I. Employee Training

38. Within 90 days of signing the Agreement, the School will ensure that all of the School's principals, deans, ELD Coordinators, teachers of ELD, and core content teachers are trained, by a qualified trainer, about: (a) the requirements of this Agreement; (b) language acquisition; (c) ELP standards; (d) ELP levels; (d) the ELD program model; (e) ELD curriculum; (f) research-based strategies for delivering and implementing the ELD program model effectively; (g) how to effectively integrate ELD into core content classes; (h) monitoring ELs, opted-out ELs, and former ELs; and (i) evaluations of ELD programs for effectiveness.

39. Within 90 days of signing the Agreement, the School will ensure that all School staff and administrators receive training about how to provide free, timely language assistance to parents with LEP through qualified translators and interpreters.

40. **Reporting:**

a. Within 60 days of signing the Agreement, the School will provide to OCR for its review and approval: (a) the name, job title, and qualifications of one or more proposed trainer(s); (b) a draft training agenda; (c) draft training materials; (d) a plan to provide the professional development to fulfill Term III.I.

b. Within 30 days of OCR's approval of the trainers and training materials, the School will provide OCR with documentation showing that the training required by Term III.I was provided, using the trainer(s) and training materials approved by OCR.

J. Recordkeeping

41. The School will maintain the following records during students' attendance at the School and for at least three years after students withdraw or age out of the School: (a) HLQs (see Term III.A.2); (b) report cards; (c) scores on standardized assessments and tests; (d) WIDA screener scores; (e) ACCESS score reports (see Terms III.C.17 and III.D.21); (f) notices of placement in an ELD program to parents (see Term III.A.5); (g) documentation demonstrating that opt-out decisions were voluntary and informed; and, (h) forms for monitoring current ELs, opted-out ELs, and former ELs (see Terms III.C.18, III.D.21, and III.E.25).

42. The School will maintain the following records for at least three years: (a) spreadsheets of ELs (see Term III.A.7(b)); (b) records of employee training and professional development regarding ELs and LEP parents (see Term III.I); and (c) ELD program evaluations (see Term III.F).

IV. Semester and Annual Reporting Requirements

A. Semester Reporting

Within 15 days of the end of each semester starting in SY 2024-25, the School will report to OCR:

1. A spreadsheet of the School's current ELs, opted-out ELs, and former ELs, with a row for each student and the following columns: (a) school name; (b) student identification number; (c) first name; (d) last name; (e) grade during the SY; (f) student's primary language indicated on the HLQ; (g) date enrolled at the School; (h) date of signed HLQ; (i) date WIDA screener administered; (j) screener scores;

(k) any parental need for translation and/or interpretation indicated on the HLQ; (l) date of placement in an ELD program; (m) EL status (e.g., current, opted-out, former, in monitoring (M1/M2); (n) current ELP level (i.e., entering, emerging, developing, expanding, proficient, or reaching); (o) last ACCESS test date; (q) current ACCESS domain scores; (r) opt-out date, if applicable; and (s) reclassification date, if applicable.

2. A spreadsheet of the School's ELD teachers, with a row for each teacher and the following columns: (a) first name; (b) last name; (c) grade(s); (d) subject(s) taught, if applicable; (e) CLD endorsement (yes or no); and (f) date the trainings required by Term III.I were completed.

3. A spreadsheet of the School's ELD Coordinator(s), with a row for each coordinator and the following columns: (a) first name; (b) last name; (c) start date as Coordinator at the School; (d) end date as Coordinator at the School, if applicable; (e) CLD endorsement (yes or no); (f) date the training required by Term III.I was completed; (g) any additional qualifications required to be the Coordinator; and (h) the class period or time designated for the ELD Coordinator to perform coordinator-related duties.

The School will promptly and fully address OCR's feedback about the Semester Reporting until OCR notifies the School that no further reporting is required for a given semester.

B. Annual Reporting

Within 30 days of the end of each SY starting in SY 2024-25, the School will submit to OCR:

1. a copy of the reminder required by Term III.A.7;

2. a sample of 5 lesson plans for ELD services at the School, including the information required by Term III.B.14, in addition to the name of the teacher and the date the lesson plan was used;

3. a copy of the reminder required by Term III.G.33;

4. a copy of completed opt-out forms (see Term III.A.6);

5. a copy of any notices to parents of opted-out students about the student's lack of progress and an offer to reenroll in the ELD program (see Term III.C.19);

6. a copy of ACCESS results for all opted-out ELs (see Term III.C.17) and current ELs (see Term III.D.21);

7. a copy of monitoring forms completed for current ELs per Term III.D.21;

8. a copy of monitoring forms completed for former ELs per Term III.E.25;

9. a copy of any corrective action plans developed per Terms III.F.28 or 29; and

10. description of any proposed changes for the subsequent SY (e.g., changes with respect to forms, templates, policies and procedures, employee training, ELD curriculum and instruction, etc.) and an explanation for each proposed change.

The School will promptly and fully address OCR's feedback about the Annual Report until OCR notifies the School that no further reporting is required.

V. Understandings and Acknowledgments

By signing this Agreement, the School and the District agree to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the School and the District understand that during the monitoring of this Agreement, OCR may visit the School and District, interview employees and students, and request such additional reports or data as are necessary for OCR to determine whether the School has fulfilled the terms of this Agreement. The School and the District understand that OCR will not close the monitoring of the Agreement until such time as OCR determines that the School is in compliance with the terms of this Agreement and the Title VI statutory and regulatory obligations at issue in this case.

The School and the District understand and acknowledge that OCR may initiate administrative enforcement or proceedings or refer this case to the U.S. Department of Justice for judicial proceedings in the event of breach to enforce the specific terms and obligations of this Agreement and/or the underlying Title VI statutory and regulatory obligations. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the School and the District written notice of the alleged breach and 60 days to cure the alleged breach.

A. Signatures For the School

This Agreement will become effective immediately upon the signature of the School representative below:

/s/	7/17/24
[redacted content]	Date

B. Signatures For the District

This Agreement will become effective immediately upon the signature of the District representative below:

/s/	7/17/24
Ms. Robin Purdy, Superintendent	Date